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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/625,963	07/24/2003	Rainer Opolka	22579	1609
535	7590	06/08/2005		
THE FIRM OF KARL F ROSS 5676 RIVERDALE AVENUE PO BOX 900 RIVERDALE (BRONX), NY 10471-0900				EXAMINER TSIDULKO, MARK
			ART UNIT 2875	PAPER NUMBER

DATE MAILED: 06/08/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/625,963	OPOLKA, RAINER	
	<b>Examiner</b>	<b>Art Unit</b>	
	Mark Tsidulko	2875	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 24 July 2003.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-11 and 16 is/are rejected.
- 7) Claim(s) 12-15 and 17-20 is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 24 July 2003 is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                    | Paper No(s)/Mail Date: _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date: _____ | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|   | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Drawings***

The drawings are objected to because it is unclear what part of the device is indicated by reference number located above the reference number “20” on Fig. 5. Also, this number is unclear: “18a” or “19a”? Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as “amended.” If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either “Replacement Sheet” or “New Sheet” pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Specification***

The disclosure is objected to because of the following informalities:

- specification does not disclose the parts indicated by the reference numbers "17a" and "20" (Fig.5);
- *spike 19 (Fig.2)* (see page 14, lines 5, 6) really is not shown on (Fig.2);
- It is unclear what is the *lamp 9* (page 14, line 19), which is not shown by the drawings.

Appropriate correction is required.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-6, 8-11, 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Winther (US 6,511,203) in view of McLean (US 4,658,534).

Referring to Claim 1 Winther discloses (Figs.1, 2) a lighting device including an elongated shaft [12], a lamp head [32] affixed to one end of the shaft and having a light sources [48] and an elongated foot member [54] at an opposite end of the shaft having an elongated spike adapted to be inserted into the ground.

Winther discloses the instant claimed invention except for that the foot member is reversible and has an impact tool capable for rupturing a glass.

McLean discloses (Figs.2, 3) a foot member [16] having a spike [18] at one end and a tool [20] at the second end which can be used for rupturing a glass. Using the threads [22], the foot member [16] may be inserted into a holder [12] with any end ([18] or [22]) being inside of the holder. With this structure each end of the member [16] may be used depending on necessity and the spike end [18] can be enclosed in the holder [12] in order to prevent a contact with a user.

Referring to Claims 2, 3 Winther discloses a plurality of LEDs [48].

Referring to Claims 4, 5 Winther discloses (Fig.1) a spike having apex angle, but does not disclose a second end being conical.

It would have been an obvious matter of design choice to provide any desired form of the ends of the foot member depending on necessity.

Referring to Claim 6 it is clearly understood from Figs.2 and 3) that using the threads [14] and [22] the member [16] may be inserted into the holder [12] (with the end [18] in) deep enough to obtain the flush connection.

Referring to Claim 8 Winther discloses the instant claimed invention except for a threaded portion.

McLean discloses (Figs.2, 3) a threaded connection between a foot member [16] and a shaft [12].

Referring to Claims 9, 10 Winther discloses (Fig.2) a connection replaceable securing a lamp head [32] on the shaft [12]. It is understood that any type of connection well known in the art, including a threaded may used for connection between the lamp head and the shaft.

Referring to Claim 11 Winther discloses (Fig.3) a plate [40], a plurality of LEDs mounted on the plate and a spiral contact springs resiliently engageable with the batteries [30].

Referring to Claim 16 Winther discloses (Fig.2) that the shaft has an compartment dimensioned to receive the spike and a battery holder [18].

It would have been obvious to one having ordinary skill in the art, at the time the invention was made, to provide the foot member of McLean for the device of Winther in order improve the tool and increase the safety of using.

Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Winther and McLean as applied to claim 6 above, and further in view of Rohrmoser et al. (US 6,162,002).

Winther et al. disclose the instant claimed invention except for friction fit.

Rohrmoser et al. disclose a friction fit between the spike [1] and shaft [4] what allow to simplify connection by eliminating the threads, as shown by McLean.

It would have been obvious to one having ordinary skill in the art, at the time the invention was made, to provide the friction fit, as taught by Rohrmoser et al., for the device of Winther et al., in order to simplify the device.

#### *Allowable Subject Matter*

Claims 12-15, 17-20 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The following is an examiner's statement of reasons for allowance:

Referring to Claims 12, 17 the prior art of record fails to show a bar-shaped lamp having a cap for receiving an impact tool and threaded onto the foot member.

Claims 13-15 are objected as claims depended on claim 12.

Claims 18-20 are objected as claims depended on claim 17.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mark Tsidulko whose telephone number is (571)272-2384. The examiner can normally be reached on 8 - 5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sandra O'Shea can be reached on (571) 272-2378. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306 for all communications.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Art Unit: 2875

M.T.

June 6, 2005



JOHN ANTHONY WARD  
PRIMARY EXAMINER